

**TESTIMONY OF BARRY FRANZ  
PRINCIPAL  
CIVIL & ENVIRONMENTAL CONSULTANTS, INC.  
BEFORE THE SUBCOMMITTEE ON  
FEDERALISM AND THE CENSUS  
COMMITTEE ON GOVERNMENT REFORM  
UNITED STATES HOUSE OF REPRESENTATIVES**

***“THE OHIO EXPERIENCE: WHAT CAN BE DONE TO SPUR BROWNFIELD  
DEVELOPMENT IN AMERICA’S HEARTLAND?”***

**MAY 16, 2005**

**INTRODUCTION**

Good morning, Mr. Chairman, and members of the Subcommittee. My name is Barry Franz. I am a principal with the consulting firm of Civil & Environmental Consultants, Inc. out of their Cincinnati, Ohio branch office. I am a registered Professional Engineer in the State of Ohio and a Certified Professional under the State of Ohio’s Voluntary Action Program administered by the Ohio Environmental Protection Agency, Division of Emergency and Remedial Response. Today, I appear before you to testify as a private consultant working in the area of Brownfield Redevelopment in the State of Ohio.

I wish to thank you Mr. Chairman, and the members of this Subcommittee, for this opportunity to speak before you today.

## **OVERVIEW**

As defined by statute, brownfields are “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant.” Brownfields are everywhere, from the vacated corner service station in the smallest township or village to the dilapidated manufacturing buildings that clutter the largest of cities’ downtown landscape. Brownfields are properties that are identified as having an environmental barrier(s) which must be overcome prior to the property’s successful reuse. The consensus a few years ago was that brownfields properties were perceived as problems and only a few entities were willing to tackle the myriad of issues to bring a property back into productive use. Today the general consensus among various development entities and their partners (both public and private) that redevelopment (i.e.; bringing back into a productive use) of a brownfield site is important for the economic well-being of a community, as well as necessary for the community’s environmental well-being. These properties are now being viewed as an opportunity more so than a problem. To capitalize on these opportunities, partnerships between local, state, and federal government along with real estate developers and other private sector entities, must be formed in order to overcome the many obstacles that are inherent to most all brownfield redevelopment projects.

## **STATE OF OHIO’S EFFORTS**

The State of Ohio’s first serious attempt to address the complex issue of brownfields redevelopment was through its development of the Voluntary Action Program (commonly called the ‘VAP’). Although this program provided a regulatory framework for engaging in brownfield cleanup projects, it has not produced the number of successes that many thought it should even

with the tax abatement and deferrals available for a property which receives a Covenant-Not-To-Sue ('CNS'). More greenfields development is currently underway in Ohio as compared to brownfields redevelopment. Simply put, it costs more to cleanup and redevelop a brownfield property than it does to develop a 'greenfield' property here in Ohio. In many cases, economics drives the project and therefore greenfields properties are selected. Only during those rare instances when the economics are truly positive (i.e.; no lawsuits; limited or significantly reduced environmental liability; capital is made available; tenants are willing to rent, lease, or buy; etc.), will a brownfield property be redeveloped here in Ohio.

The State of Ohio created the Clean Ohio Revitalization Fund Program, commonly called the 'CORF,' to assist more strongly in the economics portion of the brownfields redevelopment equation. This program provides grants to a local public entity, most commonly, the local government, in partnership with an end user to cover the costs of remediation and certain infrastructure improvements. While this has been a boon to those properties successful in securing these grants; for many brownfields properties in Ohio, the economics are still not positive. Although other state funding mechanisms are available and have been available for a period of time prior to the creation of the Ohio's CORF, they are not well known and for many public-private partnerships are only available to the public entities, and are funds which require repayment as they are not grants. The CORF needs to be continued and fully funded. In addition, those 'contaminants' eligible under the CORF should include lead-based paint.

## **ROLE OF OHIO'S LOCAL AND STATE GOVERNMENTS**

In Ohio, both the local and state governments have had to become the lead entity in brownfields redevelopments. They have a vested interest in maintaining the economic security of their citizens (as well as their tax base). The majority of federal and state programs available today to assist in brownfields redevelopment require local and state governments to be the lead entity.

These public-private partnerships in Ohio are creating successful brownfields redevelopments but these successes are slow in coming with the number of brownfields properties far exceeding, by at least an order of magnitude or more, the number of successful redevelopments. Some of the most successful local government entities include Greater Cleveland and Cuyahoga County, and the cities of Toledo, Springfield, Columbus, and Dayton, all whom have had multiple brownfield properties redeveloped. Other local governments have also had their share of success, but not to the extent or degree as the aforementioned entities.

Most of the successful brownfields redevelopments in Ohio to date may be considered as 'low-hanging fruit'. These are brownfield properties that are 'lightly' contaminated, in a desirable location, or some combination of both. But even these have not been without their obstacles. As other desirable brownfields properties are redeveloped in Ohio, the remaining brownfield properties will face an increasing number of obstacles to their redevelopment. It should be noted here that while a large number of Ohio brownfield properties are candidates for redevelopment, not all brownfield properties present an opportunity for redevelopment.

## **OBSTACLES**

In a number of previous statements, I have made references to obstacles to brownfields redevelopment in Ohio. What are some of these obstacles? Some of the more common include:

- ‘Highly’ contaminated sites (i.e.; multiple contaminants and media);
- Sites in ‘undesirable’ locations (e.g.; no interstate connection near-by, no rail transportation; etc.)
- Lack of infrastructure or undersized infrastructure servicing the property (e.g.; lack of wastewater treatment capacity; undersized water service; etc.)
- Market conditions more favorable to ‘greenfield’ site development;
- Properties that are ‘mothballed’ because the owner has no incentive to change the property status;
- Environmental liability issues (for both the current owner and the future owner); and
- Fast-tracking of a project (many real estate development deals occur quickly).

These are just a few of the common obstacles I have encountered in working with development entities. Two key obstacles that are purposely not included above are lack of available capital and financial incentives, such as tax deferrals, abatement and/or credits. They were not included because they are two huge obstacles common to both greenfield and brownfield development efforts.

## **WHAT IS WORKING AND WHAT IMPROVEMENTS ARE NEEDED**

President Bush’s signing of “The Brownfields Revitalization and Environmental Restoration Act of 2001” (BRERA) into law was an important and critical step in the efforts to redevelop brownfield properties. BRERA provided much needed funding for the states and local governments to perform assessments, remediate properties, fund state brownfield programs, and establish criteria for environmental liability relief. However, this program needs to be continued

and must be fully funded to assist state and local governments in their efforts to provide the needed leadership and economic incentives for brownfields redevelopments.

Many local governments have taken the lead in addressing brownfield properties through various means of acquiring these properties and then cleaning them up. These local governments should not be penalized for trying to do the right thing rather than sitting on their hands. I believe that the Small Business Liability and Brownfields Act of 2002 should be modified such that local governments are not held as potentially responsible parties ('PRPs') because they have voluntarily 'taken' a property before this Act was passed. In addition, certain costs such as administrative costs are not considered as eligible costs under this Act. This too should be modified to allow local and state governments to cover appropriate and necessary administrative costs.

With their tax base at stake, many local governments in Ohio are eager to work with private developers to redevelop their local brownfield properties. This eagerness does not change the fact that brownfields redevelopment is complex and costly as compared to a greenfield property. Economic incentives are necessary to spur this redevelopment in Ohio, particularly among small and medium-sized brownfield properties. One of the more common tax incentives that has been utilized is a tax incentive to offset the cost of any remedial actions at a brownfield property.

The tax bill (The Brownfield Revitalization Act – formerly H.R. 4480) proposed by Congressman Turner would allow up to \$1 billion dollars annually in deferral tax credits being allocated to each state by population as related to the poverty level. This would generate for

Ohio upwards of \$35 million dollars annually. In addition, brownfields tax credits would be allocated for up to 50% of the cost of demolition and remedial actions pursuant to the property being enrolled in Ohio's VAP with a Covenant-Not-To-Sue document being obtained. This is important to private developers to see a 'return' on the costs of the remedial action required at the property.

The 'polluter pays principle' must be retained in any form of tax incentive. Those that 'make the mess' should have some responsibility for correcting the problem. However, there currently does not exist in any form, sufficient incentives to get most original polluters to pay to remediate their properties. The component in the tax bill which allows a polluter to cover a minimum of 25% of the remedial action costs and receive full liability release for the brownfields property is a means of getting small and medium-sized brownfield properties being redeveloped. Although this will be a very controversial component of the tax bill, it is critical to moving forward on many economic levels.

Another key tax incentive issue for brownfields redevelopment which should be addressed is H.R. 877 which includes three key components:

1. Make permanent the expensing of brownfields cleanup costs.
2. Make the definition of "hazardous substances" broader to include petroleum, pesticides, lead paint, and asbestos.
3. Remove the "recapital" portion of the Internal Revenue Code Section 198 when the property is sold or otherwise disposed.

The items discussed in this section should clearly indicate that brownfields redevelopment, not only in Ohio, but across the United States is quite diverse and a ‘one size to fit all’ does not necessarily work. Therefore, a range of incentives as discussed is needed to stimulate and increase the number of brownfield properties undergoing redevelopment in Ohio.

## **CLOSING**

While numerous programs are successfully assisting in the identification, cleanup, and redeveloping of brownfield properties, much work is still needed. Legislation, such as that proposed by Congressman Turner and others, will have a significant impact on all of our efforts, both public and private, to successfully redevelop brownfield properties into productive use properties here in Ohio. In addition, the current changes and modification being made to Ohio’s programs must continue and be fully funded and supported in order to continue the progress that has been started. We strongly support these efforts to keep the focus on brownfields redevelopment and pass appropriate legislation into law to spur redevelopment.

Thank you for allowing me this opportunity to share with you my perspective as a private consultant regarding the status of brownfields redevelopment here in Ohio and also thank you for your efforts to further the existing programs and pass new legislation to redevelop brownfields.